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SENATE BILL 391

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO INSURANCE; REVISING DEFINITIONS AND ELIGIBILITY  
CRITERIA IN THE MEDICAL INSURANCE POOL ACT; PROHIBITING  
LIFETIME MAXIMUM BENEFIT LEVELS IN NEW MEXICO INSURANCE POOL  
POLICIES; CLARIFYING SMALL GROUP POLICIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-54-3 NMSA 1978 (being Laws 1987,  
Chapter 154, Section 3, as amended) is amended to read:

"59A-54-3. DEFINITIONS.--As used in the Medical Insurance  
Pool Act:

A. "board" means the board of directors of the  
pool;

B. "creditable coverage" means, with respect to  
an individual, coverage of the individual pursuant to:

- (1) a group health plan;

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- 1 (2) health insurance coverage;
- 2 (3) Part A or Part B of Title 18 of the Social  
3 Security Act;
- 4 (4) Title 19 of the Social Security Act except  
5 coverage consisting solely of benefits pursuant to Section 1928  
6 of that title;
- 7 (5) 10 USCA Chapter 55;
- 8 [~~(6)~~] a medical care program of the Indian  
9 health service or of an Indian nation, tribe or pueblo;  
10 ~~(7)~~] (6) the Medical Insurance Pool Act;
- 11 [~~(8)~~] (7) a health plan offered pursuant to  
12 5 USCA Chapter 89;
- 13 [~~(9)~~] (8) a public health plan as defined in  
14 federal regulations; or
- 15 [~~(10)~~] (9) a health benefit plan offered  
16 pursuant to Section 5(e) of the federal Peace Corps Act;
- 17 C. "federally defined eligible individual" means an  
18 individual:
- 19 (1) for whom, as of the date on which the  
20 individual seeks coverage under the Medical Insurance Pool Act,  
21 the aggregate of the periods of creditable coverage is eighteen  
22 or more months;
- 23 (2) whose most recent prior creditable  
24 coverage was under a group health plan, [~~government~~]  
25 governmental plan, church plan or health insurance coverage, as

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1 those plans or coverage are defined in Section 59A-23E-2 NMSA  
2 1978, offered in connection with [~~such a~~] that plan;

3 (3) who is not eligible for coverage under  
4 a group health plan, Part A or Part B of Title 18 of the Social  
5 Security Act or a state plan under Title 19 or Title 21 of the  
6 Social Security Act or a successor program and who does not  
7 have other health insurance coverage;

8 (4) with respect to whom the most recent  
9 coverage within the period of aggregate creditable coverage was  
10 not terminated based on a factor relating to nonpayment of  
11 premiums or fraud;

12 (5) who, if offered the option of continuation  
13 of coverage under a continuation provision pursuant to the  
14 Consolidated Omnibus Budget Reconciliation Act of 1985 or a  
15 similar state program, elected this coverage; and

16 (6) who has exhausted continuation coverage  
17 under this provision or program, if the individual elected the  
18 continuation coverage described in Paragraph (5) of this  
19 subsection;

20 D. "health care facility" means [~~any~~] an entity  
21 providing health care services that is licensed by the  
22 department of health;

23 E. "health care services" means [~~any~~] services or  
24 products included in the furnishing to [~~any~~] an individual of  
25 medical care or hospitalization, or incidental to the

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1 furnishing of [~~such~~] that care or hospitalization, as well as  
2 the furnishing to [~~any~~] a person of [~~any~~] other services or  
3 products for the purpose of preventing, alleviating, curing or  
4 healing human illness or injury;

5 F. "health insurance" means [~~any~~] a hospital and  
6 medical expense-incurred policy; nonprofit health care service  
7 plan contract; health maintenance organization subscriber  
8 contract; short-term, accident, fixed indemnity or specified  
9 disease policy; [~~or~~] disability income contracts; limited  
10 benefit insurance; credit insurance; or as defined by Section  
11 59A-7-3 NMSA 1978. "Health insurance" does not include  
12 insurance arising out of the Workers' Compensation Act or  
13 similar law, automobile medical payment insurance or insurance  
14 under which benefits are payable with or without regard to  
15 fault and that is required by law to be contained in [~~any~~] a  
16 liability insurance policy;

17 G. "health maintenance organization" means [~~any~~] a  
18 person who provides, at a minimum, either directly or through  
19 contractual or other arrangements with others, basic health  
20 care services to enrollees on a fixed prepayment basis and who  
21 is responsible for the availability, accessibility and quality  
22 of the health care services provided or arranged, or as defined  
23 by Subsection M of Section 59A-46-2 NMSA 1978;

24 H. "health plan" means [~~any~~] an arrangement by  
25 which persons, including dependents or spouses, covered or

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1 making application to be covered under the pool have access to  
2 hospital and medical benefits or reimbursement, including group  
3 or individual insurance or subscriber contract; coverage  
4 through health maintenance organizations, preferred provider  
5 organizations or other alternate delivery systems; coverage  
6 under prepayment, group practice or individual practice plans;  
7 coverage under uninsured arrangements of group or group-type  
8 contracts, including employer self-insured, cost-plus or other  
9 benefits methodologies not involving insurance or not subject  
10 to New Mexico premium taxes; coverage under group-type  
11 contracts that are not available to the general public and can  
12 be obtained only because of connection with a particular  
13 organization or group; and coverage by medicare or other  
14 governmental benefits. "Health plan" includes coverage through  
15 health insurance;

16 I. "insured" means an individual resident of this  
17 state who is eligible to receive benefits from ~~[any]~~ an insurer  
18 or other health plan;

19 J. "insurer" means an insurance company  
20 authorized to transact health insurance business in this state,  
21 a nonprofit health care plan, a health maintenance organization  
22 and self-insurers not subject to federal preemption. "Insurer"  
23 does not include an insurance company that is licensed under  
24 the Prepaid Dental Plan Law or a company that is solely engaged  
25 in the sale of dental insurance and is licensed not under that

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1 act, but under another provision of the Insurance Code;

2 K. "medicare" means coverage under Part A or  
3 Part B of Title 18 of the Social Security Act, as amended;

4 L. "pool" means the New Mexico medical insurance  
5 pool;

6 M. "preexisting condition" means a physical or  
7 mental condition for which medical advice, medication,  
8 diagnosis, care or treatment was recommended for or received by  
9 an applicant within six months before the effective date of  
10 coverage, except that pregnancy is not considered a preexisting  
11 condition for a federally defined eligible individual; and

12 N. "therapist" means a licensed physical,  
13 occupational, speech or respiratory therapist."

14 Section 2. Section 59A-54-12 NMSA 1978 (being Laws 1987,  
15 Chapter 154, Section 12, as amended) is amended to read:

16 "59A-54-12. ELIGIBILITY--POLICY PROVISIONS.--

17 A. Except as provided in Subsection B of this  
18 section, a person is eligible for a pool policy only if on the  
19 effective date of coverage or renewal of coverage the person is  
20 a New Mexico resident, and:

21 (1) is not eligible as an insured or covered  
22 dependent for ~~[any]~~ a health plan that provides coverage for  
23 comprehensive major medical or comprehensive physician and  
24 hospital services;

25 (2) is currently paying a rate for a health

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1 plan that is higher than one hundred twenty-five percent of the  
2 pool's standard rate;

3 (3) has a mental health diagnosis and has  
4 individual health insurance coverage that does not include  
5 coverage for mental health services;

6 (4) has been rejected for coverage for  
7 comprehensive major medical or comprehensive physician and  
8 hospital services;

9 (5) is only eligible for a health plan with a  
10 rider, waiver or restrictive provision for that particular  
11 individual based on a specific condition;

12 (6) has a medical condition that is listed on  
13 the pool's prequalifying conditions;

14 (7) has as of the date the individual seeks  
15 coverage from the pool an aggregate of eighteen or more months  
16 of creditable coverage, the most recent of which was under a  
17 group health plan, governmental plan or church plan as defined  
18 in Subsections P, N and D, respectively, of Section 59A-23E-2  
19 NMSA 1978, except, for the purposes of aggregating creditable  
20 coverage, a period of creditable coverage shall not be counted  
21 with respect to enrollment of an individual for coverage under  
22 the pool if, after that period and before the enrollment date,  
23 there was a [~~sixty-three-day~~] ninety-five day or longer period  
24 during all of which the individual was not covered under any  
25 creditable coverage; or

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1 (8) is entitled to continuation coverage  
2 pursuant to Section 59A-23E-19 NMSA 1978.

3 B. Notwithstanding the provisions of Subsection A  
4 of this section:

5 (1) a person's eligibility for a policy issued  
6 under the Health Insurance Alliance Act shall not preclude a  
7 person from remaining on or purchasing a pool policy; provided  
8 that a self-employed person who qualifies for an approved  
9 health plan under the Health Insurance Alliance Act by using a  
10 dependent as the second employee may choose a pool policy in  
11 lieu of the health plan under that act; and

12 (2) if a pool policyholder becomes eligible  
13 for any group health plan, the policyholder's pool coverage  
14 shall not be involuntarily terminated until any preexisting  
15 condition period imposed on the policyholder by the plan has  
16 been exhausted.

17 C. Coverage under a pool policy is in excess of and  
18 shall not duplicate coverage under any other form of health  
19 insurance.

20 D. A policyholder's newborn child or newly adopted  
21 child is automatically eligible for thirty-one consecutive  
22 calendar days of coverage for an additional premium.

23 E. Except for a person eligible as provided in  
24 Paragraph (7) of Subsection A of this section, a pool policy  
25 may contain provisions under which coverage is excluded during

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1 a six-month period following the effective date of coverage as  
2 to a given individual for preexisting conditions.

3 F. The preexisting condition exclusions described  
4 in Subsection E of this section shall be waived to the extent  
5 to which similar exclusions have been satisfied under any prior  
6 health insurance coverage that was involuntarily terminated, if  
7 the application for pool coverage is made not later than  
8 [~~thirty-one~~] ninety-five days following the involuntary  
9 termination. In that case, coverage in the pool shall be  
10 effective from the date on which the prior coverage was  
11 terminated. This subsection does not prohibit preexisting  
12 conditions coverage in a pool policy that is more favorable to  
13 the insured than that specified in this subsection.

14 G. An individual is not eligible for coverage by  
15 the pool if:

16 (1) except as provided in Subsection I of  
17 this section, the individual is, at the time of application,  
18 eligible for medicare or medicaid that would provide coverage  
19 for amounts in excess of limited policies such as dread  
20 disease, cancer policies or hospital indemnity policies;

21 (2) the individual has voluntarily terminated  
22 coverage by the pool within the past twelve months and did not  
23 have other continuous coverage during that time, except that  
24 this paragraph shall not apply to an applicant who is a  
25 federally defined eligible individual;

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1 (3) the individual is an inmate of a public  
2 institution or is eligible for public programs for which  
3 medical care is provided;

4 (4) the individual is eligible for coverage  
5 under a group health plan;

6 (5) the individual has health insurance  
7 coverage as defined in Subsection R of Section 59A-23E-2 NMSA  
8 1978;

9 (6) the most recent coverages within the  
10 coverage period described in Paragraph (7) of Subsection A of  
11 this section were terminated as a result of nonpayment of  
12 premium or fraud; or

13 (7) the individual has been offered the  
14 option of continuation coverage under a federal COBRA  
15 continuation provision as defined in Subsection F of Section  
16 59A-23E-2 NMSA 1978 or under a similar state program and ~~he~~  
17 the individual has elected the coverage and did not exhaust the  
18 continuation coverage under the provision or program, provided,  
19 however, that an unemployed former employee who has not  
20 exhausted COBRA coverage shall be eligible.

21 H. ~~Any~~ A person whose health insurance coverage  
22 from a qualified state high risk pool health policy ~~with~~  
23 ~~similar coverage~~ is terminated because of nonresidency in  
24 another state may apply for coverage under the pool. If the  
25 coverage is applied for within ~~thirty-one~~ ninety-five days

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1 after that termination and if premiums are paid for the entire  
2 coverage period, the effective date of the coverage shall be  
3 the date of termination of the previous coverage.

4 I. The board may issue a pool policy for  
5 individuals who:

6 (1) are enrolled in both Part A and Part B of  
7 medicare because of a disability; and

8 (2) except for the eligibility for medicare,  
9 would otherwise be eligible for coverage pursuant to the  
10 criteria of this section."

11 Section 3. Section 59A-54-13 NMSA 1978 (being Laws 1987,  
12 Chapter 154, Section 13, as amended) is amended to read:

13 "59A-54-13. BENEFITS.--

14 A. The health insurance policy issued by the pool  
15 shall pay for medically necessary eligible health care services  
16 rendered or furnished for the diagnoses or treatment of illness  
17 or injury that exceed the deductible and coinsurance amounts  
18 applicable under Section 59A-54-14 NMSA 1978 and are not  
19 otherwise limited or excluded. Eligible expenses are the  
20 charges for the health care services and items for which  
21 benefits are extended under the pool policy. The coverage to  
22 be issued by the pool and its schedule of benefits, exclusions  
23 and other limitations shall be established by the board and  
24 shall, at a minimum, reflect the levels of health insurance  
25 coverage generally available in New Mexico for small group

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1 policies; provided that a health insurance policy issued by the  
2 pool shall not include a lifetime maximum benefit. The  
3 superintendent shall approve the benefit package developed by  
4 the board to ensure its compliance with the Medical Insurance  
5 Pool Act. The benefit package shall include therapy services  
6 and hearing aids.

7 B. The Medical Insurance Pool Act shall not be  
8 construed to prohibit the pool from issuing additional types of  
9 health insurance policies with different types of benefits  
10 [~~which~~] that, in the opinion of the board, may be of benefit to  
11 the citizens of New Mexico.

12 C. The board may design and employ cost containment  
13 measures and requirements, including preadmission certification  
14 and concurrent inpatient review, for the purpose of making the  
15 pool more cost effective."

16 Section 4. Section 59A-54-16 NMSA 1978 (being Laws 1987,  
17 Chapter 154, Section 16, as amended) is amended to read:

18 "59A-54-16. POOL POLICY.--

19 A. A pool policy offered under the Medical  
20 Insurance Pool Act shall contain provisions under which the  
21 pool is obligated to renew the contract until the day on which  
22 the individual in whose name the contract is issued first  
23 becomes eligible for medicare coverage, except that in a family  
24 policy covering both husband and wife, the age of the younger  
25 spouse shall be used as the basis for meeting the durational

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1 requirement of this subsection.

2 B. The pool shall not change the rates for pool  
3 policies except on a class basis with a clear disclosure in the  
4 policy of the right of the pool to do so.

5 C. In the case of a small group policy, a pool  
6 policy offered under the Medical Insurance Pool Act shall  
7 provide covered family members the right to continue the policy  
8 as the named insured or through a conversion policy upon the  
9 death of the named insured or upon the divorce, annulment or  
10 dissolution of marriage or legal separation of the spouse from  
11 the named insured by election to do so within a period of time  
12 specified in the contract subject to the requirements of this  
13 section [~~59A-54-16 NMSA 1978~~]."